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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/812,495	03/30/2004	Aaron Chapman	1050/128	3236
2101 7590 10/04/2007 BROMBERG & SUNSTEIN LLP 125 SUMMER STREET BOSTON, MA 02110-1618			EXAMINER MITCHELL, TEENA KAY	
			ART UNIT 3771	PAPER NUMBER
			MAIL DATE 10/04/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/812,495	<b>Applicant(s)</b> CHAPMAN ET AL.	
	<b>Examiner</b> Teena Mitchell	<b>Art Unit</b> 3771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 10-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 21 is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-17, 19 and 20 is/are rejected.
- 7) ☒ Claim(s) 18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                          | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

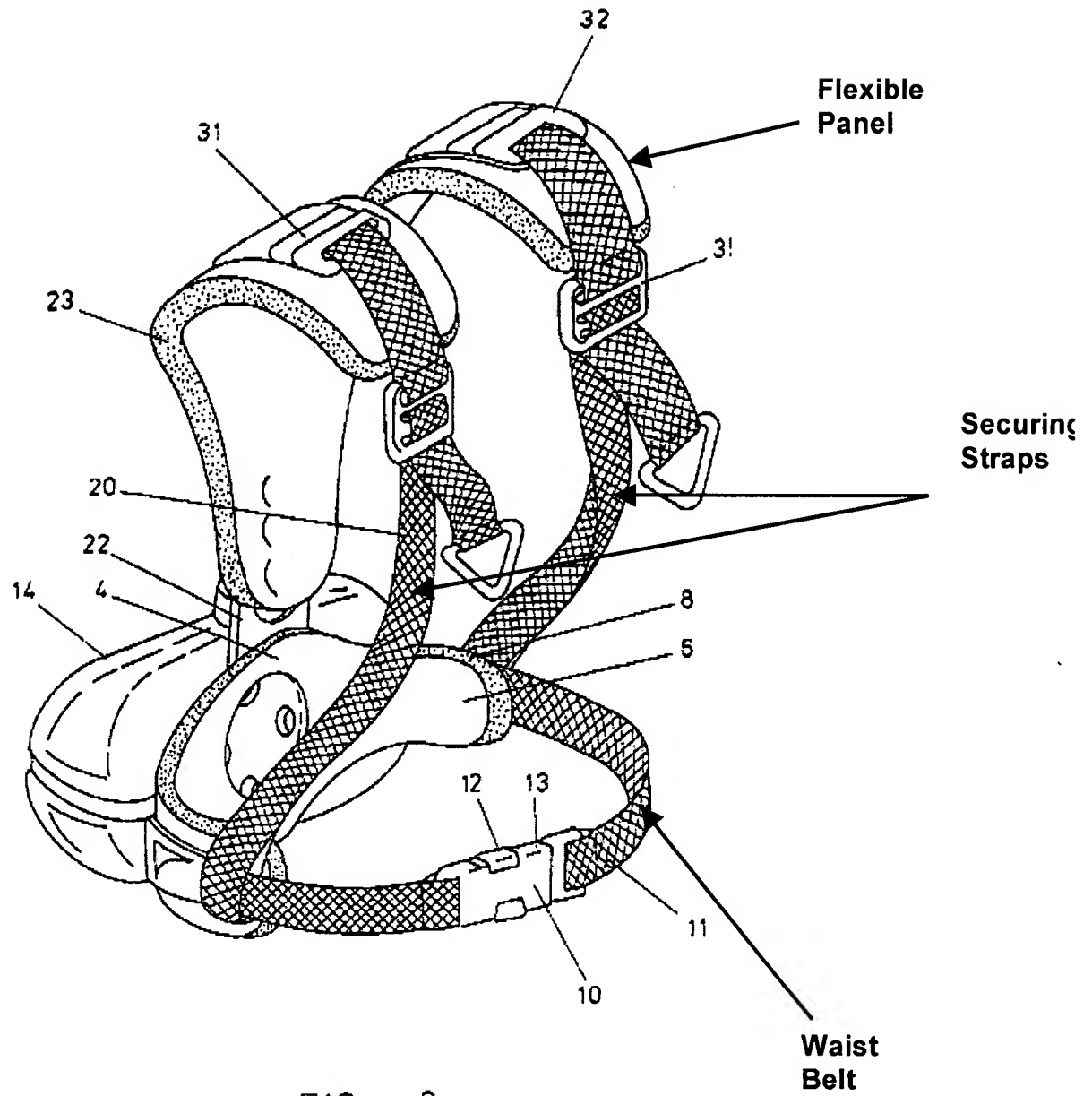
**The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:**

**A person shall be entitled to a patent unless –**

**(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.**

**Claims 1, 8, 10, 11, 14-17, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Hall et.al. (5,954,250).**

Hall in a harness for use with breathing apparatus discloses at least one resilient flexible shoulder panel (see illustration of Fig. 2 below), wherein the harness is adapted to be arranged in use to be worn by a user of breathing apparatus and to adopt and operational configuration when so worn (Figs. 1, 2, 5, 11-15), wherein the resilient characteristics of the panel are such that the harness retains an operational configuration whilst not in use, and wherein the harness further includes a flexible mounting plate for receiving a cylinder of breathing gas (15).



Regarding claim 8, Hall discloses one or more securing straps and a belt portion of a user (Figs. 11-14).

Regarding claim 10, Hall discloses wherein the mounting plate is of moulded material, such as plastics material (Col. 3, lines 32-55).

Regarding claim 11, Hall discloses wherein the mounting plate is moulded so as to include one or more recessed portions for receiving one or more components of breathing apparatus, such as a hose and/or cylinder manifold (Figs. 1-5, 9-14, 16).

Regarding claim 14, Hall discloses at least one shoulder panel and belt portion (see illustration of Fig. 2 above), the belt portion comprising attachment means for attaching a cylinder of breathing gas to the belt portion (Figs. 21, 22, 26-28), the attachment means comprising mounting means arranged to engage releasably a mounting portion of a cylinder, a retaining means arranged to retain a retaining device for the cylinder, wherein, in use a cylinder may be attached to the belt portion by both the mounting means and the retaining means or else by the retaining means alone (Figs. 21, 22, 26-28).

Regarding claim 15, Hall discloses wherein when a cylinder is attached to the belt portion by both the mounting means and the retaining means, the cylinder and the belt portion are juxtaposed in a first configuration, and when the cylinder is attached to the belt portion by only the retaining means, the cylinder and belt portion are loosely attached in a second configuration (Figs. 1-5, 9-14, 16, 21, 22, 26-28).

Regarding claim 16, Hall discloses wherein when in use, the cylinder and belt portion are retained in the second configuration a user is able to move the cylinder

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freely about his person whilst retaining attachment to the cylinder by the retaining means (Figs. 1-5, 9-14, 21, 22-28).

Regarding claim 17, Hall discloses wherein the retaining means comprises one or more retaining straps and the retaining portion of the cylinder comprises a holster (on 14').

Regarding claim 19, Hall discloses a flexible hip-plate (1, 9) for location on a hip of a wearer, and including at least two connectors for connecting the cylinder containing a fluid for breathing thereto, wherein a first connector is arranged for connecting a cylinder detachably, a second connector is arranged for connecting the cylinder non-detachably, the detachable connector being arranged to hold the cylinder connected thereto in close proximity to the hip-plate, and the non-detachable connector being arranged to hold the cylinder connected thereto between the legs of a user when the detachable connector between the harness the cylinder is detached (Col.7-8; Figs 21, 22, 26-28).

**Claims 1 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Boyd (4,979,659).**

Regarding claim 1, Boyd discloses at least one resilient flexible shoulder panel (12), wherein the harness is adapted to be arranged in use to be worn by a user of breathing apparatus and to adopt an operational configuration when so worn (Figs. 1-3) wherein the resilient characteristics of the panel are such that the harness retains an operational configuration whilst not in use, and wherein the harness further includes a flexible mounting plate for receiving a cylinder of breathing gas (21).

Regarding claim 12, Boyd discloses wherein the at least one flexible panel is adapted to be arranged in use to pass around the wearer over one shoulder, in the manner of a bandolier, or sash (Fig. 1).

***Claim Rejections - 35 USC § 103***

**The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:**

**(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.**

**The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.**

**Claims 2-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hall et.al. (5,954,250).**

Regarding claims 2 and 3, Hall discloses the claimed invention except for the composite material and comprises a foam, which may be a closed-cell, open-face foam, such as compression-moulded EVA foam. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the composite material comprises a foam, which may be a closed-cell, open-face foam, such as compression-moulded EVA foam, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of design consideration, one would want to use a foam as it

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would provide comfort to the user of the harness. In re Leshin, 227 F.2d 197, 125 USPQ 416.

Regarding claims 4-6, note rejection of claim 3 above.

**Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hall et.al. (5,954,250) in view of Kranz et.al. (4,498,471).**

The difference between Hall and claim 20 is the cylinder (60) having a manifold (at 68) with a port for breathing-gas line from the cylinder to a facemask and a connector for connecting the breathing apparatus to an additional fluid supply.

Kranz in a breathing-gas cylinder teaches a manifold with a port for breathing – gas line from the cylinder a facemask and a connector for connecting the breathing apparatus to an additional fluid supply. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the cylinder with a manifold with a port for breathing –gas line from the cylinder a facemask and a connector for connecting the breathing apparatus to an additional fluid supply as such is well known in the respiratory art as taught by Kranz.

***Allowable Subject Matter***

Claim 21 is allowable over the prior art of record.

Claim 18 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.



***Response to Arguments***

Applicant's arguments filed 7/14/07 have been fully considered but they are not persuasive. The arguments are based upon functional limitations of which the prior art is fully capable of meeting the limitations, therefore the examiner is maintaining the previous rejection.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Teena Mitchell whose telephone number is (571) 272-4798. The examiner can normally be reached on Monday-Friday however the examiner is on a flexible schedule.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Teena Mitchell  
Primary Examiner  
Art Unit 3771  
October 1, 2007

  
TKM